UNITED STATES
v.
MAURICE E. JONES

IBLA 70-64 Decision April 30, 1971

Mining Claims: Determination of Validity – Mining Claims: Discovery: Generally

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Discovery: Generally

Evidence of mineralization sufficient only to warrant further exploration is insufficient to establish discovery of a valuable mineral deposit under the mining laws.

Mining Claims: Contests – Mining Claims: Determination of Validity – Rules of Practice: Government Contests

A mining claim is properly declared invalid and patent application therefor is properly rejected where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

IBLA 70-64 : Utah Contest No. 10456

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	:	Mining claim declared
UNITED STATES	:	invalid; mineral patent
v.	:	application rejected
MAURICE E. JONES	:	
	:	Affirmed

DECISION

Maurice E. Jones has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Hearings and Appeals, Bureau of Land Management, dated May 20, 1969, affirming a hearing examiner's decision of November 1, 1968, declaring his lode mining claim invalid and rejecting his mineral patent application, Utah 1043791. 1/

The Government's contest complaint, served upon Jones September 28, 1966, charged with respect to the Bella Bonita claim:

(1) that the land embraced therein is nonmineral in character;

(2) that minerals have not been found within the claim in sufficient quantities to constitute a valid discovery;

(3) that the value of the acceptable improvements on the claim is insufficient to meet the statutory requirement of $500 per claim. 2/

1/ This is the contestee's second appeal involving the Bella Bonita claim. Previously, the Utah land office had declared a portion of the claim invalid because it was covered by a first form reclamation withdrawal. That decision was reversed by the Director because the effective date of the withdrawal fell after location of the claim. See Maurice E. Jones, Utah 0143791 (March 9, 1966).

2/ 30 U.S.C. § 29 (1964).

The contestee did not appear at the hearing upon the complaint, but was represented by counsel. At the outset of the hearing the examiner granted a motion allowing contestee fifteen days after conclusion of the Government's case within which to decide whether to present any testimony (Tr. 4). 3/ None was presented.

The Government, through documentary evidence and the testimony of two qualified mining engineers employed by the Bureau of Land Management, submitted the following case. The claim was located May 19, 1955, and is described in Mineral Survey No. 7329 (Ex. 6), which shows a discovery cut and tunnel leading therefrom. Two faults cross the claim, one at its west end and the other at the discovery cut workings. The fault zone at the latter is between ten and twenty feet wide, within which was observed the only mineralization on the claim (Tr. 15). This consists of an exposure of iron-stained material approximately ten feet wide by ten feet high. Proceeding from the discovery cut into the cave or excavation of the workings, this material decreases to approximately three feet in width, pinching out entirely over a distance of ten to twelve feet. The material consists principally of limonite, an iron oxide.

The claim was examined on four occasions by mining engineers of the Bureau of Land Management. The first of these occurred on June 28, 1965. The engineer, Ferdie D. Peterson, found a trench extending approximately 20 feet leading to the entrance of a cave. Material samples taken by Peterson, at points indicated by Jones, did not appear to him to justify assay due to lack of iron-stained material.

A second examination of the claim was made on June 16, 1966, by Peterson in the company of Jarvis R. Klemm, another Bureau mining engineer, and Jones. On this occasion, five samples were taken from the workings at points suggested by Jones. Two samples were not assayed due to lack of visible mineral content. The three samples assayed contained traces of gold, silver, and iron content of 38.20%, 42.08%, and 2.80%, respectively (Ex. 9).

The third examination took place on July 16, 1968. Peterson and Klemm examined a tunnel, apparently excavated many years previously, at the south end of the claim. Six samples

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3/ The reference is to the transcript of hearing. Other such references will be similarly cited. References to exhibits introduced at the hearing shall be cited "Ex."

were assayed. One, a grab sample taken from the dump of a trench near the east end of the claim and east of the discovery cut, contained a trace of gold, no silver, and 16.20% iron. Three channel samples taken at the discovery cut and tunnel contained no gold or silver, but 47.20%, 0.35%, and 1.35% iron. Two samples taken inside the tunnel at the south end of the claim contained only minute quantities of iron and no gold or silver (Ex. 6).

The last inspection of the claim was made on August 8, 1968, by Peterson and Klemm. A Geiger counter employed on that occasion revealed no indication of radioactive material. A sample taken by them in the tunnel at the west end of the claim contained a trace of gold, no silver, and 1.1% iron (Ex. 11).

The workings observed during the investigations were the only improvements found on the claim. In taking samples during the investigations, the engineers endeavored to select those containing the greatest amount of iron-stained material. Locations where the samples were taken are plotted on a map of the claim (Ex. 7). Assayers were instructed to assay samples for gold, silver, and iron; it appeared that these were the only minerals the material might contain.

Peterson and Klemm testified that only 10 to 15 tons of material containing 40% iron could be extracted from the claim, and that the grade of iron generally is so low as to require milling after extraction. A much greater amount of such material, both agreed, would have to be located before a company would attempt to develop an iron mine on the claim. 4/ Both engineers concluded that the minerals found on the claim would not justify the expenditure of money and effort by a prudent man in an attempt to develop a paying mine.

The hearing examiner, in holding the claim invalid, emphasized that in contest proceedings the Government bears the burden of producing sufficient
evidence to establish a prima facie case, and, thereafter, the claimant must show by a preponderance of the evidence that his claim is valid. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959), clearly supports the examiner's determination in this regard. The examiner held

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4/ For example, Peterson stated that "at least between 50 and 100 thousand tons" would be necessary to interest a company in such a deposit (Tr. 36).

that a claimant must show the discovery of a "valuable mineral deposit" on the claim, but that value in the sense of proved ability to mine the deposit at a profit need not be shown, citing Adams v. United States, 318 F.2d 861, 870 (9th Cir. 1963). Applying the "prudent man" test set out in Castle v. Womble, 19 L.D. 455, 457 (1894), approved in Chrisman v. Miller, 197 U.S. 313, 322 (1905) and Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963), the examiner concluded that the prima facie case presented by the Government, in the absence of evidence by the contestee, required that the claim be held invalid.

The Bureau of Land Management sustained the examiner's decision. It noted that the burden of establishing sufficient mineralization on the claim is upon the contestee. It is not incumbent upon the Government to undertake exploration, such as core drilling, to establish a discovery. The Bureau concurred with the examiner that the Government had established a prima facie case, and that, in the absence of rebuttal testimony, the examiner's decision should be affirmed, citing United States v. Lawrence W. Stevens et al., 76 I.D. 56 (1969).

We concur in the decisions of the examiner and the Bureau of Land Management. The Government established a prima facie case in support of its complaint. As noted above, the contestee presented no evidence of record in support of the allegations made in his pleadings. Accordingly, the record compels the conclusion that no discovery has been shown on the claim. Even assuming the correctness of contestee's assertion on appeal that evidence of mineable mineral on his claim justifies further prospecting and exploration, such evidence is insufficient to support a discovery. United States v. Frank Coston, A-30835 (February 23, 1968). Contrary to contestee's pleadings, it is not the obligation of the Government to establish a discovery. United States v. Lem A. and Elizabeth D. Houston, 66 I.D. 161 (1959). Discovery of a valuable mineral deposit within a claim in sufficient quantity and quality to justify a prudent man to expend effort and expense in developing a valuable mine with reasonable prospects of success is essential to a discovery. Adams v. United States, supra at 870.

Having found that the claim is invalid for lack of discovery, we need not dispose of the other issues raised by the parties.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed, the Bella Bonita claim is declared invalid, and the patent application is denied.

Newton Frishberg, Chairman

We concur:

Martin Ritvo, Member

Joan B. Thompson, Member.